OLR Bill Analysis

sSB 207 (File 108, as amended by Senate "A")*

AN ACT CONCERNING RESIDENTIAL HEATING OIL AND PROPANE CONTRACTS.

SUMMARY:

This bill generally requires a written contract for (1) selling residential heating fuel, in addition to those for guaranteed price heating fuel plans, which are required under current law and (2) renting or leasing a heating fuel tank. It exempts automatic delivery agreements from this requirement under certain conditions. The bill applies to fuel sales where fuel is the primary source of heat for residential heating or domestic hot water for a residential structure having one to four units.

It also sets out requirements for:

1. guaranteed fuel price plans,
2. tank sale and lease contracts,
3. fuel delivery, and
4. fuel dealers.

It increases and standardizes the penalties for violations.

Except for an underground tank addendum requirement, the bill does not apply the retail contract, delivery, or tank provisions to existing heating fuel consumers who have a valid written contract on July 1, 2013. But its provisions apply on the contract's renewal or expiration dates.

It allows the Department of Consumer Protection (DCP) to (1) suspend or revoke any registration if the dealer fails to comply with a subpoena, (2) compel by subpoena, the production of any document

from any fuel dealer or provider of surety bonds, futures or forwards contracts, physical supply contracts, or other similar commitments regarding compliance with the guaranteed price plan requirements, and (3) adopt regulations establishing a consumer bill of rights.

Finally, it states that nothing in the bill validates any provision or clause that would otherwise be unenforceable under the law on liquidated damages in consumer contracts.

*Senate Amendment "A":

1. extends the maximum length of heating oil contracts from 18 to 36 months, with certain conditions;
2. exempts automatic delivery agreements from the written contract requirement;
3. sets contract requirements for purchasing an underground tank;
4. allows aboveground tank consumers the right to cancel their relationship with a dealer without penalty;
5. adds the consumer bill of rights provision;
6. adds an additional method for dealers to secure fuel for guaranteed price plan contracts; and
7. makes minor and technical changes.

EFFECTIVE DATE: July 1, 2013

RETAIL CONTRACTS

Contract Requirements

The bill generally requires heating fuel dealers to have a written contract when they (1) sell residential heating fuel or (2) rent or lease a heating fuel tank. Current law requires written contracts only for guaranteed price plans. The bill defines guaranteed price plans to include "fixed price," "buy ahead," "prebuy," "prebought," "prepaid," "full price," "lock in," "capped," "price cap," or other similar terminology. It defines additional terms for purposes of the expanded written contract requirements.

Each written contract must be in plain language and include all delivery terms and conditions and the amount of fees, charges, surcharges, or penalties. The contract may only have fees, charges, surcharges, or penalties for certain delivery options, tank rental fees, or liquidated damages for violating contract terms.

These fees, charges, surcharges, or penalties must (1) not increase before the contract expires and (2) be printed in the contract in 12 point, boldface type of uniform font.

The bill allows dealers to meet the written contract requirements by complying with the Connecticut Uniform Electronic Transaction Act, the federal Electronic Signatures in Global and National Commerce Act, and provisions about electronic contracts in the Uniform Commercial Code (see BACKGROUND).

Contract Period

The contract duration may be up to 36 months, but the dealer must offer the consumer the option of entering a bona fide commercially reasonable contract with an 18-month term. The consumer and dealer may agree to a contract for less than 18 months. Contracts for underground tanks may be up to five years, as long as the fuel term agreement is the same length as the lease agreement.

Exceptions

Consumer Initiated Delivery. Under the bill, a written contract is not required for any heating fuel delivery initiated by the consumer that is payable upon delivery or billed with no future delivery commitment and no unauthorized fees, charges, or surcharges.

Automatic Delivery. The bill also exempts agreements that are solely automatic deliveries from having written contracts if they fulfill certain requirements.

In order to qualify for the exemption, the consumer must be able to terminate the automatic delivery at any time with no fee, charge, surcharge, or penalty assessed for termination. The dealer that provides automatic delivery must also provide written notice to the consumer of the termination method, which is specified in the bill.

The notice must be included with each invoice for products that are delivered automatically. The consumer may deliver a termination notice to the dealer by (1) written request delivered by certified mail, (2) electronic mail to the dealer's valid electronic mail address, or (3) electronic facsimile to a valid facsimile number at the dealer's place of business.

The consumer must give notice at least one day prior to the day he or she wishes to terminate automatic delivery service. The consumer is not responsible for the delivery payments after notice has been given, except for deliveries (1) made within one business day after the notice was given and (2) which were scheduled for delivery prior to the notice, with consideration for weekends, holiday closings, or extenuating circumstances not under the dealer's control.

Allowable Fees

Under current law, a dealer may only assess a surcharge on the price per gallon or total delivery charge when the:

1. delivery is 100 gallons or less;
2. delivery is made outside the dealer's normal service area or business hours; or
3. dealer incurs extraordinary labor costs for the delivery.

The bill imposes the same restrictions on delivery fees or charges, but only when the delivery is initiated by the consumer.

Electronic Alternative

Under the bill, an agreement can be oral by telephone if the dealer:

1. gives the consumer a written copy of the terms and conditions, except the duration, unit price, and maximum number of units

covered by the contract, before the telephone conversation;

2. uses an interactive system providing the duration, unit price, and maximum number of units covered by the contract;

3. retains readily retrievable recordings of the consumer’s affirmation to the contract terms and conditions for at least one year beyond the contract's expiration;

4. sends a confirmation letter to the consumer with a copy of the agreed upon terms and conditions; and

5. retains a copy of each confirmation letter.

Prohibited Provisions

Automatic Renewal. The bill prohibits written contracts for the sale of heating fuel or lease of equipment from having an automatic contract renewal unless it complies with the consumer commodity automatic renewal provision and home heating oil and propane gas sales law. By law, written consumer commodity contracts require notice that the consumer may cancel the contract (CGS § 42-126b).

Liquidated Damages. The bill prohibits delivery contracts from having a liquidated damages provision for consumer breach where the liquated damages exceed actual damages to the dealer. Liquidated damages is an agreed upon monetary amount in a contract that one party will pay the other upon contract breach.

Consumer Bill of Rights

Under the bill, the DCP commissioner may adopt regulations (1) establishing a consumer bill of rights regarding home heating dealers, (2) requiring dealers to provide consumers with such bill of rights prior to entering a contract, and (3) permitting dealers to post the bill of rights on their Internet web sites or record and play it back when consumers call the dealers’ offices.

GUARANTEED PRICE PLANS

Capped Plan

Under the bill, the contract for such a plan must contain clear and specific language stating how and under what circumstances the price will decrease.

Contract Terms

The law requires a contract to include (1) the amount of money paid, (2) the maximum number of gallons committed by the dealer for delivery, and (3) that the performance of the contract is secured. The bill requires that a contract include a provision that states the circumstances under which the price may fluctuate, if it is subject to fluctuation. Under the bill, all of these contract terms must be written in clear and specific language.

Securing Guaranteed Contracts

Under current law, a dealer is prohibited from entering, renewing, or extending a guaranteed contract unless he or she secured the contract. Under the bill, dealers are only required to secure contracts they enter.

The bill requires dealers to secure guaranteed contracts, whether prepaid or not, within five days of acceptance. Under current law, they may secure a prepaid contract in two ways. The first is obtaining heating fuel futures or forwards contracts, or other similar commitments, the total amount of which allows the dealer to purchase, at a fixed price, fuel in an amount not less than 80% of the maximum number of gallons or amount that the dealer is committed to deliver according to the guaranteed price contract. The bill also allows dealers to (1) obtain physical supply contracts or (2) use physical inventory they hold title to for securing the contract. A physical supply contract is an agreement for wet barrels or gallons of heating fuel secured by a dealer. The second permitted way to secure the contract by law is to obtain a surety bond of at least 50% of the total amount of funds paid by the consumer.

Under current law, a dealer may also secure a prepaid contract by obtaining heating fuel futures or forwards contracts, or other similar commitments in the amount he or she estimates is committed to the guaranteed price contract. For the surety option, a dealer may obtain a bond in an amount he or she estimates will be paid by the consumer based on all capped price per gallon fuel. The bill eliminates both these security options.

The bill requires a dealer to secure a guaranteed price plan that is not prepaid through the heating fuel futures contract option specified above. The law requires dealers to maintain the total amount of these futures contracts and surety bond amount required for the effective period of the guaranteed price plan contract, except the amount may be reduced to reflect the fuel amount that is already delivered and paid by the consumer.

Secured Amount Notification

The bill requires dealers to notify DCP if the secured surety amount drops below 50% of the remaining balance the consumer paid under the prepaid contract. The law requires this notification when the heating fuel futures contract option drops below 80%.

Automatic Renewal

The bill prohibits a guaranteed price plan contract from containing an automatic contract renewal or extension clause.

Cancellation Notification

The bill requires anyone who holds a surety bond for a dealer to notify DCP of any cancelation of the bond with three business days. The law already requires this for the heating fuel futures supply contract.

HEATING FUEL DELIVERY

Delivery Ticket Label

The bill broadens what must be on the delivery ticket. Under current law, a dealer must place the total number of units sold and the amount of any delivery surcharge in a conspicuous place on the delivery ticket that must be given to the consumer or his or her agent at delivery.

The bill requires dealers, at the time of delivery, to provide a delivery ticket with the (1) unit price; (2) total number of gallons or units sold; and (3) the amount of any fee, charge, or surcharge. The delivery ticket must clearly indicate these items in a conspicuous place.

Under existing law, unchanged by the bill, a dealer cannot bill or attempt to collect from a consumer an amount that exceeds the amount on the ticket for (1) the unit price multiplied by the total number of gallons or units and (2) any allowable fee, charge, or surcharge.

Delivery Charges

The bill prohibits dealers from assessing a fee, charge, or surcharge on any delivery, including under an automatic delivery agreement that the dealer initiates.

LEASED FUEL TANK CONTRACTS

Leased Tanks

The bill requires a contract for a tank being leased or loaned to indicate in writing the:

1. tank's description,
2. initial installation charges,
3. amount and timing of rental or loan payments,
4. manner in which the dealer will credit the consumer for any unused heating fuel, and
5. terms by which a consumer may terminate the contract.

The lessor and lessee may enter into a separate contract for additional services, including maintenance, repair, and warranty of the equipment if it complies with the previous contract requirements. The contract duration for a tank installed above ground may be for up to 36 months, but the dealer must offer the consumer the option of entering an 18-month contract. The consumer and dealer may agree to a contract for less than 18 months. Contracts for underground tanks are limited to no more than five years.

Above Ground Tank Cancellation

The bill allows a consumer who leases an above ground tank through an oral agreement or a course of dealing to cancel the relationship with the dealer without penalty. It prohibits tank removal charges or forfeiture of unused heating fuel and specifies the consumer is entitled to a refund of all unused product at the same price which he or she purchased the fuel.

Option to Purchase Underground Leased Tank

The bill requires a lease for an underground tank to contain a clause allowing the consumer to buy the tank and associated equipment at any time during the agreement, but within five years after the contract commences. The purchase price must be disclosed in the contract and may not increase before the contract expires. Any liability waivers or warranty transfers must be stated in the contract.

For existing contracts, both oral or written, where the purchase option or price is silent or unspecified, the dealer must mail or deliver a contract addendum to the consumer by September 1, 2013. The addendum must include an option to purchase the tank and associated equipment at a commercially reasonable price at any time before September 1, 2018. If the consumer purchases the tank and any associated equipment, all heating fuel contract obligations are legally satisfied and terminate immediately.

Dealer Filling Requirements

The bill bans a dealer who owns a tank and has exclusive fill rights from refusing to make fuel deliveries to a consumer whose complaint DCP is mediating or investigating between October 1st and March 1st annually if the consumer pays cash.

FUEL DEALERS

Registration

Current law requires propane and heating oil dealers to annually apply for separate DCP certificates of registration. The bill requires dealers of either heating oil or propane to apply for a heating fuel dealer certificate. A dealer who sells both types of fuel only needs to obtain one registration, but the bill requires a separate registration for each name the business uses. It also exempts federally established heating assistance agencies from registering.

Board of Directors Disclosure

The bill also requires dealers to disclose on these forms all affiliated companies that are under common ownership or have interlocking boards of directors that are registered with DCP.

Displaying Registration Number

The bill requires dealers to display the registration number on all contracts, delivery tickets, letters, and vehicle advertisements. The law already requires dealers to display their registration numbers in all advertisements and other material they prepare or issue.

PENALTIES

Under current law, the penalty for a dealer who violates the prohibition against selling fuel oil or propane to be used for residential heating without printing the unit price, total number of units sold, and the amount of any delivery surcharge on the delivery ticket is a fine of up to $100 for the first offense and up to $500 for each subsequent offense. The bill increases this to a fine of up to $500 for a first offense, up to $750 for a second offense occurring within three years of the first offense, and up to $1,500 for a subsequent offense occurring within three years of a prior offense.

The bill applies these penalties to violations of its provisions on contracts, guaranteed price plans, delivery, availability, payment plan, advertising, and registration requirements, including the following actions. By law, dealers are:

1. prohibited from requiring regular consumers to accept as a condition of delivery a minimum heating fuel delivery of over 100 gallons, or 75% of the primary tank size, whichever is less (CGS § 16a-22a(a));
2. prohibited from conditioning the availability of burner

maintenance or repair service on an agreement that the consumer purchase heating fuel from them, but the dealer may give priority for service to consumers with delivery contracts (CGS § 16a-22k(a));

3. required to return to the consumer within 10 days after the termination notice, any excess money that was collected for an established payment plan. This does not apply to payment plans with a specific product unit price that is agreed upon for the plan's length (CGS § 16a-22k(b));

4. required to disclose if they sell under a trade name on any communication, invoice, or advertising the name of the person or entity that filed a certificate to use such trade name to any consumer or potential one (CGS § 16a-22k(c)); and

5. required to comply with DCP registration requirements by submitting evidence to the DCP commissioner when registering, if they offer plumbing or heating work service, that it will only employ licensed people to do the work and display the state license number on all commercial vehicles and in a conspicuous manner on all printed advertisements, bid proposals, contracts, invoices, and business stationery (CGS §§ 16a-23m --16a-23o).

The bill also makes violating its retail contract, delivery, and tank provisions an unfair and deceptive trade practice (CUTPA). Under existing law, violations of the provisions in item 5 above and the guaranteed price plan are CUTPA violations and failure to maintain a surety bond for a guaranteed price plan contract is a class A misdemeanor, punishable by a fine of up to $1,000, up to one year imprisonment, or both.

BACKGROUND

E-Sign Laws

The Connecticut Uniform Electronic Transactions Act establishes a legal basis to use electronic communications in transactions in which the parties have agreed to conduct business electronically. The federal

Electronic Signatures in Global and National Commerce Act (E-SIGN) validates the use of electronic records and signatures (15 USC § 7001 et seq.). The State Uniform Commercial Code modifies the federal law in certain ways to the extent federal law allows (CGS § 42a-7-101 et seq.).

CUTPA

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 15 Nay 2 (03/13/2012)

Energy and Technology Committee

Joint Favorable
Yea 17 Nay 4 (04/17/2012)